



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-043

October 22, 2025

Memorial University

Summary:

The Complainant made an access to information request to Memorial University for financial statements related to the Genesis Centre. Memorial denied access to the records, stating the Genesis Centre is a separately incorporated entity and Memorial did not have custody or control of the records. The Commissioner concluded that Memorial did not have custody or control of the Genesis Centre records and recommended that Memorial maintain its position.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, section 8(1).

Authorities Relied On: [Bose v. Newfoundland and Labrador \(Information and Privacy Commissioner\), 2025 NLSC 18.](#)

[Canada \(Information Commissioner\) v. Canada \(Minister of National Defence\), 2011 SCC 25.](#)

BACKGROUND

- [1] The Complainant made an access to information request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”), to Memorial University for:

Genesis special purpose financial statements, auditor's report, and all other information provided to Memorial in 2025 under the AGM Requirement as set out in Genesis By-Law No. 1 or section 262 of the Corporations Act.

- [2] Memorial responded to the request by stating that it did not have custody or control of the records, noting that the Genesis Centre is a separately incorporated entity and not subject to the Act. The Complainant disagreed with this assessment and filed a complaint with this Office.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY'S POSITION

- [4] Memorial argued that given the recent Supreme Court of Newfoundland and Labrador decision in **Bose v. Newfoundland and Labrador (Information and Privacy Commissioner)** (“**Bose**”), the records were not in Memorial’s custody or control and therefore it was unable to provide them to the Complainant.

COMPLAINANT'S POSITION

- [5] The Complainant argued that the records should be in the custody or control of Memorial as the Genesis Centre by-laws and section 262 of the **Corporations Act** require the Genesis Centre to provide the records to Memorial as the sole shareholder of the Genesis Centre. Additionally, the Complainant noted that similar records had been provided to them in the past.

ISSUES

- [6] Does Memorial have custody or control of the Genesis Centre financial statements requested by the Complainant?

DECISION

- [7] The right of access provided under section 8 of the Act applies to records in the custody or control of a public body. The Supreme Court of Newfoundland and Labrador considered the issue of custody or control with respect to three separately incorporated entities in the recent Bose decision, including those of the Genesis Centre. The Genesis Centre is a separately incorporated entity, with Memorial as its only shareholder. It is required to provide the records to Memorial and Memorial has the right to request the records under Genesis' by-laws and section 262 of the **Corporations Act**.
- [8] However, in order to determine if Memorial has custody or control of the records or merely has bare possession, we must apply the test for custody or control as articulated in **Canada (Information Commissioner) v. Canada (Minister of National Defence)**, and discussed in this particular context in Bose. The test is therefore:
1. Do the contents of the Requested Information relate to a Memorial matter?
 2. Considering all relevant factors, could a senior official at Memorial reasonably be able to obtain a copy of the Requested Information?
- [9] Both questions must be answered in the affirmative for Memorial to be considered to have custody or control of the records.
- [10] While Memorial has bare possession of the record as the sole shareholder of the Genesis Centre, Genesis Centre financial records are not a Memorial matter. As noted in Bose, and relevant to this matter as well: "This information does not arise out of a decision-making function of Memorial. It arises out of a decision-making function of each of the SIEs" (in this case, the Genesis Centre). The record "does not relate to the workings of Memorial in the

sense of ‘throwing light on the case.’” Therefore, the records cannot be said to be in the custody or control of Memorial.

RECOMMENDATIONS

- [11] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that Memorial University maintain its position on this matter.
- [12] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of Memorial University must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.
- [13] Dated at St. John’s, in the Province of Newfoundland and Labrador, this 22nd day of October 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador